

From: swingingclub
To: Microsoft ATR
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Subject: Microsoft Settlement

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Dear Madam or Sir:

May It Please The Court:

I am in favor of a Settlement of the Microsoft matter based on the fact that prolong litigation does nothing for either side but waste resources. In retrospect, this protracted matter of anti-trust litigation against a company who has greatly influenced modern technology does nothing for creativity in the business community. When the Honorable Judge Thomas P. Jackson issued a decision to break up Microsoft, the decision had an earthquake reaction on the stock market. The entire market declined on the day his decision was issued.

Further, no entity has come up with definitive numbers to show how Microsoft has caused actual damages. The damages that have been formulated against Microsoft by the plaintiffs have been pure hyperbol and mere speculation at best. I would speculate that the recent move to file a law suit by AOL is a retaliatory act because of Microsoft's involvement in the bidding for AT&T's cable network against AOL. Comcast was the winner and AOL was the loser.

Case law in contract matters states: "where there is competition" fairness is not part of the calculus as long as there are no illegal acts. The same principle apply to matters involving Microsoft and its competitors. Some of the business plaintiffs in this proceeding did not have the financial resources to compete in the development of their products prior to this law suit; and, now is crying foul because Microsoft is at a disadvantage at this juncture.

There is never a level playing field when there is competition. Microsoft should not be penalized because of the largess of its pocket book. You compete with the cards you are dealt when you do not have the financial resources to compete.

A settlement is in the best interest of all sides because: limited judicial resources; defendants, plaintiffs, and the shareholders of all entities involve will benefit because the resources used to litigate this matter could be better used to pay shareholders in terms of dividends derived from profits instead of a writedown because of litigation cost; the litigation cost will most likely be deducted from research and development of new products; and, there will be more money available to settle this claim instead of litigation.

On record, which is public knowledge it has been factually shown that the states who participated in the tobacco settlement did not use the money they receive properly according to the terms of the settlement agreement. The states were supposed to use the money to curb teen smoking. Some states used only a

fractional amount. I argue this point because the attorneys generals from the various states who are participating in this proceeding cannot show actual physical injury. Economic injury which the states will most likely argue is pure speculation. Economics is a science of speculation and courts do not reward damages based on speculation. This case is unlike the tobacco suit where people died because someone was less than candid about a particular product. This case hinges on business competition and not personal injury.

Settlement by any means necessary and not protracted litigation. I would speculate in the event of litigation it will greatly impact our economy negatively as will be reflected in the stock market as was the case in a past decision.

Respectfully submitted,

Thomas P. Johnson, III